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In re Application of	:	
FUJII et al	:	DECISION ON
Application No.: 09/936,151	:	
PCT No.: PCT/JP00/01681	:	
Int. Filing Date: 17 March 2000	:	PETITION UNDER
Priority Date: 17 March 1999	:	
Attorney Docket No.: JJM-472	:	
For: STERILIZING AGENT CAPSULE CONTAINER	:	37 CFR 1.181
AND STERILIZER USING THE SAME	:	

This decision is in response to the "PETITION FOR WITHDRAWAL OF ABANDONMENT" received 21 April 2003, which is being treated as a petition under 37 CFR 1.181 requesting acceptance of a copy of the Declaration submitted as filed in the USPTO on 15 April 2002. The decision is also in response to the supplemental response received on 27 June 2002 indicating a change of the inventor's name. Applicants have submitted, inter alia, a copy of the 15 April 2002 PTO stamped itemized postcard receipt. The itemized postcard lists, inter alia, the following item: Declaration. The five (5) months fee, \$2,010.00, extension of time has been charged to applicants' Deposit Account No.: 10-0750/JJM472/ACF

### **BACKGROUND**

On 07 September 2001, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), a copy of the international application. Applicants, however, did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because no executed Declaration or Oath was provided with the transmittal letter.

On 01 November 2001, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.47(a) and (b), in that it: is not executed in accordance with either 37 CFR 1.66 or 37 CFR 1.68, and \$130.00 surcharge for providing the oath or declaration later than the appropriate 30 months from the priority date (37 CFR 1.492(e)) is required. The notice also indicated that the items above must be submitted within two (2) months from the date of this

notice or by 22 or 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 09 May 2002, the DO/EO/US mailed a "NOTIFICATION OF DEFECTIVE RESPONSE" (Form PCT/DO/EO/916) which indicated that the current oath or declaration does not comply with 37 CFR 1.497(a) and (b) in that it: 2<sup>nd</sup> inventor name "Takeshi Orii" is not the same on Request form or Publish application.

On 10 December 2002, the DO/EO/US erroneously mailed a "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) which indicated that applicant had failed to respond to the "NOTIFICATION OF MISSING REQUIREMENTS (PCT/DO/EO/905), mailed 11/01/2001 within the time period set therein. Accordingly the application was abandoned.

In response to the "NOTIFICATION OF ABANDONMENT" mailed on 10 December 2002, petitioner submitted on 21 April 2003 the instant petition requesting withdrawal of the Notice of Abandonment. In support of the request, petitioner has provided a copy of the returned/stamped receipt card acknowledging a receipt date of 15 April 2002.

### **DISCUSSION**

#### **I. 37 CFR 1.181:**

A review of the file reveals that applicant's originally filed papers(executed declaration) was received in the USPTO on 15 April 2002 and placed in US application 09/936,151.

Consequently, since the original declaration filed on 15 April 2002 was placed in the application file, the petition filed on 21 April 2003 is **MOOT**.

#### **II. TRANSLATION ERROR OF THE NAME OF SECOND INVENTOR:**

On 15 April 2002, applicants filed an executed declaration. In the given name of the of the second inventor, the name "Takeshi" appears; this first given name did not appeared in the international application.

As indicated in the 27 June 2002 supplemental response, the correct name of the second inventor is "Takeshi Orii" and not "Ken Orii" as published in PCT application WO00/55070, which was the result of a translation error as explained in the supplemental response filed on 27 June 2002. It indicated that the name "Ken" comes from an incorrect translation in the PCT application. The discrepancy occurred because the name "Ken" and the name "Takeshi" are both derived from one Chinese character in Japanese.

Applicants' response is accepted as a sufficient response to the Notification of Defective Response (FORM PCT/DO/EO/916) mailed on 09 May 2002. The correct name "Takeshi Orii" will be reflected in the US national stage processing. See MPEP 605.04(b).

**DECISION**

The petition under 37 CFR 1.181 is **MOOT**.

Applicants' request to withdraw the "NOTIFICATION OF ABANDONMENT" is **GRANTED** since the reply filed on April 15, 2002 to the Notification of Missing Requirements mailed on 01 November 2001 was timely. The NOTIFICATION OF ABANDONMENT, mailed 10 December 2002 has been **VACATED**.

Further, the filing receipt will reflect the correct name of the second inventor as "Takeshi Orii." The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision, that is, for issuance of a Notification of Acceptance of Application (Form PCT/DO/EO/903) identifying a 35 U.S.C. § 371(c)(1), (c)(2), and (c)(4) date of **15 April 2002**.



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